

## AQUATICS FACILITIES MASTER PLAN CONTRACT BETWEEN THE CITY OF DURHAM AND SZOSTAK DESIGN, INCORPORATED

This contract is dated, made, and entered into as of the 12th day of April, 2016, by the City of Durham ("City"), a N. C. municipal corporation, and Szostak Design, Incorporated ("Contractor") or ("Szostak"), a corporation organized and existing under the laws of North Carolina;

Sec. 1. Background and Purpose. The City recently completed an assessment of the City's five existing pool facilities and spraygrounds. The conclusions of this assessment study emphasized the need for comprehensive master planning for future development of the City's Aquatics facilities, given the age, condition and limited pool functionality/recreational features of many of the existing facilities. The Contractor will provide an Aquatic Facilities Master plan for the City of Durham.

Sec. 2. Services and Scope to be Performed. Presumption that Duty is Contractor's. The Contractor shall provide the following scope of work:

### **Phase 1 – Data Collection**

- A. Review of the recent Durham Swimming Pools Assessment Study, the City of Durham's Parks and Rec Master Plan and other relevant planning documents.
- B. Site Visits of the City's existing pool facilities and review of each facilities programs.
- C. Collect the relevant City demographics, including current and future.
- D. Map the existing City aquatic facilities, and others within a 50-mile radius of Durham, as well as complementary area aquatic providers. Assign typical user service areas associated with each facility.
- E. Conduct up to six Stakeholder meetings and up to four Public meetings for input regarding needs and preferences and to discuss national/regional aquatics trends. Conduct and tabulate an online survey.
- F. Identify up to four peer community aquatics programs. Collect relevant data on each program including facility quantities, capacity and capability of aquatic facilities, attendance, annual operating budgets, capital expenditures, program offerings and future program and facility expansion plans.
- G. Attend up to four public events to assist in promotion of the Aquatics Master Plan process and assist City of Durham in the preparation of promotional documents (process descriptions, flyers, posters, press releases, etc.).
- H. Prepare a preliminary Needs Analysis based on the analysis of the data collection.

### **Phase 1 Deliverables:**

- 1. Preliminary Needs Analysis Document based on all data collection.
- 2. Include all of the demographics, aquatic facility mapping, aquatic trends, survey results, public and stakeholder comments and peer community survey as backup documentation in the Needs Analysis document.

Note: The final Needs Analysis document is to be included as a chapter in the final Master Plan Document.

### **Phase 2 – Conceptual Plan Options**

- A. Looking at the City's current and future needs, provide up to three Concept Plan Options for a future Aquatic Facility to be developed in approximately 5 years and up to three Concept Plan Options for a future Aquatic Facility to be developed in 10-15 years. These options will be based on the preliminary

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Needs Analysis and other data collected during Phase 1.

- B. Provide a preliminary Probable Opinion of Cost for each Concept Plan Option.
- C. Provide an analysis of expected revenues and expenses associated with pool programming types.
- D. Provide recommendations on energy efficiency and sustainable pool maintenance best practices.
- E. Finalize the Needs Analysis.
- F. Stakeholder meetings to review the Concept Plan Options and receive feedback.

### Phase 2 Deliverables:

- 1. Final Needs Analysis Document.
- 2. Up to 3 concept plan options for the immediate need (5 years out), with the above noted financial analysis and energy/maintenance recommendations for each.
- 3. Up to three concept plan options for future needs (10-15 years out), with the above noted financial analysis and energy/maintenance recommendations for each.

Note: A synopsis of the concept plan options and all associated documentation is to be included as a chapter in the final Master Plan Document.

### **Phase 3 – Conceptual Plan Recommendations**

- A. From the Conceptual Plan Options, work with the Stakeholders to select a Recommended Concept Plan for a future Aquatic Facility to be developed in approximately 5 years and a Recommended Concept Plan for a future Aquatic Facility to be developed in 10-15 years.
- B. Finalize the Probable Opinion of Cost for each of the above.
- C. Provide anticipated service areas for the above Concept Plans, for future planning purposes, considering the type/size of the recommended facility and their corresponding maximum service area.
- D. Provide site selection criteria for the Recommended Concept Plans, which considers the area required for parking, landscape and open areas, pedestrian connectivity and other site considerations.
- E. Provide guidance on the implementation of public private partnership opportunities, alternative funding opportunities and bond issue strategic preparation in the form of consultations with staff, recommended actions and activities and presentation of relevant case studies.

### Phase 3 Deliverables:

- 1. The final recommended Concept Plan for the immediate need (5 years out) and for the future (10-15 years out)
- 2. Probable Opinion of cost for immediate need and the future.
- 3. Recommendations for the anticipated facility service areas of each Concept Plan.
- 4. Site selection criteria to aid in the identification of prospective facility sites.

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Note: Synopsis of the recommended Concept Plan and all associated documentation is to be included as a chapter in the final Master Plan Document.

### **Phase 4 – Final Master Plan**

A. Prepare a presentation of the Master Plan for the City Council and present at a City Council Work Session.

B. Submit the Final Master Plan Report.

### **Deliverables:**

1. Master Plan PowerPoint presentation to City Council at Work Session.
2. Following City Council comment and approval, finalize the Master Plan report including documentation of all previous Master Plan Process phases.
3. Provide ten bound hard copies, two bound hard copy appendices and one digital copy. Single copies of additional archived documents/illustration in original form.

### **The Preliminary Project Schedule is as follows:**

Phase 1 – Data Collection and Needs assessment	May 2016-August 2016
Phase 2 – Conceptual Plan Options	August 2016-September 2016
Phase 3 – Conceptual Plan Recommendations	September 2016-November 2016
Phase 4 – Presentation to Council and Final Master Plan	November 2016 – December 2016

Note: The estimated duration of the project is 28 weeks. This is a preliminary schedule and will be updated by the architect at the beginning of the project and at the beginning of each phase.

In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract. Unless the context requires otherwise, if this contract states that a task is to be performed or that a duty is owed, it shall be presumed that the task or duty is the obligation of the Contractor.

Sec. 3. Reserved.

Sec. 4. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 5. Contractor’s Billings to City. Compensation. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. Within thirty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

The City shall pay the Contractor for the Work as follows: lump sum fee for Basic Services in the amount of **One Hundred Ten Thousand Dollars (\$110,000.00), and a not to exceed allowance of Two Thousand Dollars (\$2,000.00) for two additional public meetings, for a total not to exceed sum of One Hundred Twelve Thousand Dollars (\$112,000.00).** Allowances will only be utilized upon written approval by an authorized city representative. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section. The project phases are described in Section 2: Services and Scope to be Performed. Payment shall be made based upon the percent completion of the phases provided below.

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**Compensation Per Phase:**

**Professional Fee:**

<b>Base Fee</b>	<b>Total Per Phase</b>
Phase 1: Data Collection	\$58,000
Phase 2: Conceptual Plan Options*	\$16,000
Phase 3: Conceptual Plan Recommendations	\$14,000
Phase 4: Final Report	\$22,000
Subtotal Fee	<b>\$110,000</b>
Supplemental Allowance: Two Additional Public Forums	\$2,000
<b>Total Fee:</b>	<b>\$112,000</b>

**Consultant Hourly Rates**

Additional Services shall require an amendment to the contract and shall be billed on a not-to-exceed basis, in accordance with the hourly rates set forth in this Section. Additional services shall not be performed by the Architect without express prior approval from the Owner.

The use of Allowances must be based on the hourly rates set forth in this Section and require prior written approval from the Owner.

- |   |               |
|---|---------------|
| 1. P. Szostak, Szostak Design (SDI)                         | \$160.00/Hour |
| 2. R Spears, Szostak Design                                 | \$130.00/Hour |
| 3. S Howell, Szostak Design                                 | \$110.00/Hour |
| 4. K. Post, Counsilman-Hunsaker (CH)                        | \$180.00/Hour |
| 5. S Hatchell, Susan Hatchell Landscape Architecture (SHLA) | \$180.00/Hour |
| 6. J Powless. Mulkey Engineers and Consultants (MEC)        | \$110.00/Hour |
| 7. L Royster/ BREE and Associates (BREE)                    | \$140.00/Hour |

Sec. 6. Prompt Payment to Subcontractors. (a) Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all Subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the Subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the Subcontractor interest, beginning on the 8<sup>th</sup> day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham.

(b) If the individual assigned to administer this contract for the City (in this section, titled "Prompt Payment

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to Subcontractors,” he or she will be referred to as the “Project Manager”) determines that it is appropriate to enforce subsection (a) in this manner, the City may withhold from progress or final payments to the Contractor the sums estimated by the Project Manager to be

- (i) the amount of interest due to the Subcontractor under subsection (a), and/or
- (ii) the amounts past-due under subsection (a) to the Subcontractor but not exceeding 5% of the payment(s) due from the City to the Contractor.

This subsection (b) does not limit any other rights to withhold payments that the City may have.

(c) Nothing in this section (titled “Prompt Payment to Subcontractors”) shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the Subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%.

(d) The Project Manager may require, as a prerequisite to making progress or final payments, that the Contractor provide statements from any Subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

Sec. 7. Insurance.

**Insurance Requirements**

Contractor agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Contract the following applicable coverage’s and limits. The requirements contained herein, as well as City’s review or acceptance of insurance maintained by Contractor is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Contractor under this Contract.

**Commercial General Liability** – Combined single limit of no less than \$1,000,000 each occurrence and \$2,000,000 aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

**Umbrella or Excess Liability** – Contractor may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest ‘Each Occurrence’ limit for required policies. Contractor agrees to endorse City of Durham as an ‘Additional Insured’ on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a ‘Follow-Form’ basis.

**Worker’s Compensation & Employers Liability** – Contractor agrees to maintain Worker’s Compensation Insurance in accordance with North Carolina General Statute Chapter 97 and with Employer Liability limits of no less than \$1,000,000 each accident, each employee and policy limit. This policy must include a Waiver of Subrogation.

**Professional Liability** – Contractor agrees to maintain Professional Liability Insurance with limits no less than \$1,000,000, covering claims arising out of professional architect, engineers and surveyors services performed in connection with this contract.

**Additional Insured** – Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability. The Additional Insured shall read ‘City of Durham as its interest may appear’.

**Certificate of Insurance** – Contractor agrees to provide City of Durham a Certificate of Insurance evidencing that all coverage’s, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Contractor’s insurer. If Contractor receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Contractor agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Durham  
Attn: (Marilee Martin, General Services Dept.)  
101 City Hall Plaza  
Durham, NC 27701

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Sec. 8. Performance of Work by City. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section. If the Contractor fails to perform the Work in accordance with the schedule required by this contract, including the schedule required by Section 2, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies.

Sec. 9. Exhibits. The following exhibits are made a part of this contract: None  
In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 10. Notice. (a) This subsection (a) pertains to all notices related to or asserting default, breach of contract, claim for damages, suspension or termination of performance, suspension or termination of contract, and extension or renewal of the term. All such notices shall be given by personal delivery, fax, UPS, Federal Express, a designated delivery service authorized pursuant to 26 U.S.C. 7502(f)(2), or certified United States mail, return receipt requested, addressed as follows. The parties are requested to send a copy by email.

To the City:

Marilee Martin  
City of Durham  
101 City Hall Plaza  
Durham, NC 27701-3329  
The fax number is (919)-560-4970.  
Email: Marilee.martin@durhamnc.gov

To the Contractor:

Roger Spears  
Szostak Design, Inc.  
310-1/2 West Franklin Street  
Chapel Hill, NC 27516  
919-929-5244  
The fax number is (919)-960-7967  
Email: rspears@szostakdesign.com

(b) Change of Address. Date Notice Deemed Given. A change of address, email address, fax number, or person to receive notices under subsection (a) shall be made by notice given pursuant to subsection (a). All notices and other communications related to or under this contract shall be deemed given and sent at the time of actual delivery, if personally delivered or sent by fax, personal delivery, UPS, Federal Express, or a designated delivery service. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Indemnification (a) Indemnification for Charges Arising from Professional Services. To the maximum extent allowed by law, Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of Contractor's performance of Professional Services under this Contract, but only to the extent such Charges are caused by the Professional Negligence of Contractor or its subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (a), Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Indemnification for Charges Not Arising from Professional Services. To the maximum extent allowed by law, Contractor shall defend, indemnify, and save harmless Indemnitees from and against all other Charges (not covered in subsection (a)) that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection (b), Contractor shall at its sole



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expense defend Indemnitees with legal counsel reasonably acceptable to City.

(c) Definitions. As used in subsections “a” and “b” above and “d” below -- “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within “Charges” are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). “Indemnitees” means City and its officers, officials, independent contractors, agents, and employees, excluding Contractor. “Professional Services” means the performance of a particular, discrete act, which is required by North Carolina state law to be performed by an engineer, architect, landscape architect, or land surveyor licensed by the State of North Carolina. “Professional Negligence” means failure of Contractor to comply with the applicable standard of care to render Professional Services. That standard shall meet or exceed a national standard, unless a higher standard of care is applicable in the Durham community or similar communities.

(d) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(e) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of Contractor under this contract.

(f) Limitations of Contractor's Obligation. Subsections “a” and “b” above shall not require Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 12. Termination for Convenience (“TFC”). (a) *Procedure.* Without limiting any party's right to terminate for breach, the parties agree that the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. (b) *Obligations.* Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality, if any, shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment.* The City shall pay the Contractor an equitable amount for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor one hundred dollars as a TFC fee and shall pay the Contractor for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment because of TFC except as stated in this section, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

### Sec. 13. State Law Provisions.

(a) E-Verify Requirements. (A) If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129 – (i) the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS; (ii) the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (A) shall have the meanings intended by NCGS 143-129(j); and (iii) the City is relying on this subsection (A) in entering into this contract. (B) If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

(b) Iran Divestment Act Certification. The Contractor certifies that, if it submitted a successful bid for this contract, then as of the date it submitted the bid, the Contractor was not identified on the Iran List. If it did not submit a bid for this contract, the Contractor certifies that as of the date that this contract is entered into, the Contractor is not identified on the Iran List. It is a material breach of contract for the Contractor to be identified on the Iran List during the term of this contract or to utilize on this contract any subcontractor that is identified on the

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Iran List. In this Iran Divestment Act Certification section -- “Contractor” means the person entering into this contract with the City of Durham; and “Iran List” means the Final Divestment List – Iran, the Parent and Subsidiary Guidance List – Iran, and all other lists issued from time to time by the N.C. State Treasurer to comply with G. S. 143C-6A-4 of the N.C. Iran Divestment Act.

### Sec. 14. Miscellaneous

(a) Choice of Law and Forum; Service of Process. (i) This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This subsection (a) shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this subsection. (ii) If the Contractor is not a natural person (for instance, the Contractor is a corporation or limited liability company), this subsection (ii) applies. “Agent for Service of Process” means every person now or hereafter appointed by the Contractor to be served or to accept service of process in any State of the United States. Without excluding any other method of service authorized by law, the Contractor agrees that every Agent for Service of Process is designated as its non-exclusive agent for service of process, summons, and complaint. The Contractor will instruct each Agent for Service of Process that after such agent receives the process, summons, or complaint, such agent shall promptly send it to the Contractor. This subsection (ii) does not apply while the Contractor maintains a registered agent in North Carolina with the office of the N. C. Secretary of State and such registered agent can be found with due diligence at the registered office.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment. Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) Notice of City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that article, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that article provides, in part, “If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies.” It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(i) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(j) Principles of Interpretation and Definitions. (1) The singular includes the plural and the plural the singular. The pronouns “it” and “its” include the masculine and feminine. References to statutes or regulations



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include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) "Duties" includes obligations. (5) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (6) The word "shall" is mandatory. (7) The word "day" means calendar day. (8) The word "Work" is defined in Section 2. (9) A definition in this contract will not apply to the extent the context requires otherwise.

(k) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless it is signed by the City Manager, a deputy or assistant City Manager, or, in limited circumstances, a City department director. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

(l) City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this contract or the Contractor's services under this contract, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

\_\_\_\_\_

By: \_\_\_\_\_

preaudit certificate, if applicable \_\_\_\_\_

Szostak Design, Incorporated.

By: \_\_\_\_\_ (SEAL)

Title of officer: \_\_\_\_\_

State of \_\_\_\_\_

ACKNOWLEDGMENT BY CORPORATION

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that

\_\_\_\_\_ personally appeared before me this  
day and stated that he or she is

***(strike through the inapplicable:)*** chairperson/ president/ chief executive officer/ vice-president/ assistant  
vice-president/ treasurer/ chief financial officer of

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Szostak Design, Incorporated, a corporation, and that by authority duly given and as the act of the corporation, he or she signed, under seal, the foregoing contract or agreement with the City of Durham. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

My commission expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public